



State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

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May 21, 2008

The Honorable André Bauer
President of the Senate
State House, 1st Floor East Wing
Columbia, South Carolina 29202

Dear Mr. President and Members of the Senate:

I am hereby vetoing and returning without my signature S. 401, R-270. The bill amends the resident vendor preferences in the state procurement code by adding a seven percent preference for government contractors and subcontractors who employ South Carolina residents.

This bill is well intentioned. There is nothing seemingly more unfair to South Carolina taxpayers than their government retaining services from an out-of-state firm while local firms are somehow disadvantaged in the reverse. Despite these good intentions, the effect of this bill would be to create greater problems for both taxpayers and private firms down the road. Our thinking is as follows:

One, we do not believe it is the role of government to be in the businesses of picking winners and losers in the commercial marketplace. This bill does. At some point, those of us who are Republicans need to start acting like Republicans who believe in the market, rather than erecting barriers that prevent whoever has the best price and best service to win business. Procurement, it would seem to us, ought to be about getting the best value in service and price for the money. If you go for other objectives, in time you end up with things as harmful to the economy as the price support system that has existed for years in sugar and some other agricultural products.

Two, on the same front, we believe it is the private sector's job to create jobs and government's job is to most efficiently offer its services to its people – rather than go into the jobs creation program by way of erecting barriers.

Three, this will make the cost of government more expensive by requiring the state to purchase goods and services at less than competitive rates. According to the Budget and Control Board's fiscal impact statement, this would mean the state could pay up to 10 percent more on some government contracts.

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Today, the cost of government in South Carolinians is 130 percent of the national average. Legislation like this, though popular in the political season, does nothing to reduce this cost to the average taxpayer. In that regard, some would say this legislation typifies the view that government can afford to remain inefficient and uncompetitive simply because it's the government.

This legislation only amplifies some of the poor fiscal decisions that have been made in the past few years. While times were good over the past four years, spending increased by 42 percent. Meanwhile, long-term liabilities in both the State Retirement System and the Other Post-Employment Benefits have climbed above \$20 billion – saddling future generations with the decisions made in Columbia today. Simply put, our children and grandchildren cannot afford any more politically popular ideas.

The present legislation is especially troubling at a time when government will be bringing in less revenue than in recent years. As the Senate Finance Chairman surely knows – he is the bill's sponsor – revenues are expected to drop for only the second time in fifty years. In the face of diminishing revenue, we should be looking for ways to cut the costs of government rather than inflate them.

Finally, we also have doubts about the bill's constitutionality. The Privileges and Immunities Clause of the United States Constitution prohibits the state from arbitrarily denying rights – including the right to do business – to out-of-state residents. This legislation appears to violate this clause by discriminating against out-of-state employers and employees by making them less competitive in providing goods and services through government contracts. This legislation is similar to the local government ordinances regarding employment practices of government contractors struck down by the U.S. Supreme Court in *United Building & Construction Trades Council v. City of Camden*.

For these reasons, I am vetoing and returning without my signature S. 401, R-270.

Sincerely,

A handwritten signature in dark ink, appearing to be 'MS', written in a cursive style.

Mark Sanford